

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

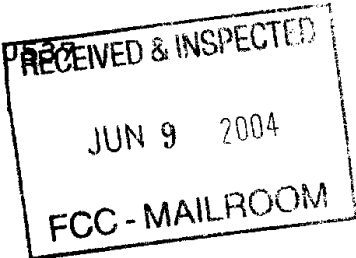
ORIGINAL

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
Smiley, Texas

) MB Docket No. 02-248

) RM-10538



To: Assistant Chief,
Audio Division
Media Bureau

OPPOSITION TO LINDA CRAWFORD'S
'REINSTATEMENT OF INTEREST'

On May 27, 2004, Linda Crawford ("Crawford") filed a pleading in this proceeding styled as her "Reinstatement of Interest". New Ulm Broadcasting Company ("New Ulm"), also a Party in this proceeding, herewith submits its Opposition to that "Reinstatement of Interest" and for the reasons set forth below, respectfully submits that the Crawford pleading be dismissed and/or denied. In support whereof, the following is submitted:

I. Preliminary Statement of Defects in the Crawford Pleading.

By pleading dated April 6, 2004, and filed with the FCC (date-stamped received by the FCC April 16, 2004) Linda Crawford ("Crawford") filed a "Motion to Dismiss Petition" which indicated that she "...had decided not to pursue a station in Smiley, Texas, at this time and therefore I have concluded to request that the FCC dismiss my Petition/expression of interest." The

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request was unequivocal and final in nature and left no doubt to the FCC or the other parties that Crawford was withdrawing from the proceeding as of that time and withdrawing her expression of interest in building a station in Smiley.

Having done so, incredibly, Crawford almost two months later in a pleading dated May 27, 2004, filed her "statement" entitled "Reinstatement of Interest" which simply states as a fact that, after an absence of two months, she was 'back', stating simply as a self-fulfilling fact that "I hereby reinstate my interest in the proposed channel 280A at Smiley, Texas". It is of some substantial importance to note that she did not ASK the FCC for leave or permission to be reinstated in the case, but simply stated it as a fact totally within her own power to effect, with no stated authority to do so, as a Devine right of Kings to simply do as she wished, how she wished, and when she wished.

Her pleading contained no "good cause" showing upon which to base such an extraordinary request, nor for that matter, even an "explanation" as to why she withdrew and then two months later simply decided to return, other than to state that "...my previous withdrawal of interest and this reinstatement of interest have been due to matters unconnected to the merits of [her petition for Smiley], or any challenge thereto". To the extent that she even offered that cryptic statement, all that it says is that the circumstances surrounding her inconsistent actions were, in her opinion, unrelated to her petition at Smiley and yet, at the same time, formed the very basis for her

withdrawal and her "reinstatement". She declined to indicate what those circumstances might have been or to allow the FCC to make any determination of its own as to their relevance or merit.

II. The Crawford "Reinstatement" Pleading is Defective On its Face and Should be Dismissed.

A. There was No Showing of Required "Good Cause"

While it may be argued that, in a practical sense, there is little for the FCC to do in reacting to an announced withdrawal from a proceeding, the same is not at all true for any proposed "reinstatement". Recognizing at the outset that a withdrawal followed by a proposed return to the proceeding two months later raises major substantive issues of proper procedure, prejudice to the public and other parties, wasted Commission resources on case analyses during the "absence period", and precedential effects that could only be negative to the Commission and the public, any Petition or request for such an extraordinary treatment would perforce require a very persuasive good cause showing. In the instant case, Crawford not only offered no good cause showing of any kind, she did not even REQUEST that the FCC consider reinstating her petition, opting instead to simply state unilaterally that she was doing it, as if she had the supreme power to do so.

To state the obvious, she does not have such a power and, in the total absence of any good cause showing upon which to allow such an unusual action, there is simply no basis for the FCC to allow Crawford to do what she says she is doing. Indeed, it is

reasonable to believe that the Commission did not take a two month hiatus from consideration of this case subsequent to receiving notice of Crawford's withdrawal, and it is patently unreasonable to expect the Commission to revisit whatever it has done in the case over the past two months to reintroduce the interest of Linda Crawford.

Such an action would be an obvious and needless waste of limited FCC resources in both time and money and the accompanying delay would be prejudicial not only to the remaining parties, but, most importantly, to the 3,000 citizens of Schulenburg who continue to be deprived of any broadcast reception service or transmission service of any kind, a deficiency that would be quickly remedied by adoption of New Ulm's petition to initiate service there.

Nor is the absence of any radio service in Schulenburg a mere "inconvenience" for them. Note that when the Emergency Broadcast System is activated in these troubled times, there is nothing to activate in Schulenburg. Not only nothing to activate there, but a total absence of any reception of any radio service as recognized and defined by the Commission at any place or part of the community, 3,000 people currently left behind with nothing: No service of any kind, transmission OR reception. For such a situation to exist at this time in the 21st Century is simply unacceptable and flatly contrary to the most basic premise and mandate of the Communications Act to bring some service to everyone and every area of our Country.

There simply can be no greater priority under any criteria or policy than to correct the existing intolerable deficiency existent at Schulenburg. 1/ To the extent that Crawford's attempts to quit and then rejoin this proceeding introduce further complications and delay in bringing such essential service to Schulenburg, they are on their face contrary to the public interest.

As noted above, having made no attempt to show the good cause and unique public interest circumstances necessary to support Crawford's proposed return and "reinstatement" in this proceeding, Crawford's pleading (it was not really a "petition" but more of her "announcement") should be dismissed out of hand and she should not be allowed to "reinstate herself" in this proceeding.

B. No Specific Recommitment to Build or Present Financial Ability to Do So.

Having said that, we are also constrained to note here that had she in fact submitted a good cause showing sufficient to have cleared the formidable first hurdle of demonstrating such unique circumstances that the public interest would be served by allowing her to withdraw from the case, be out of the proceeding

1/ The fact that the Crawford proposal is to allocate a first service to the "town" of Smiley, population 453 and area of 1.3sq. km. AND presently enjoying the reception of radio service, in place of adding a first service to Schulenburg, a real town of close to 3,000 persons (2000 census at 2,699), covering six sq.km. in size and with no existent radio transmission or reception service of any kind, leads one to wonder what public policy or recognition of the public interest could possibly support that outcome under ANY imaginable circumstances.

for two months, and then magically "come back", thereby vitiating all that had been done in her "absence", that would still have left a second hurdle, also totally unaddressed by Crawford, that being a requirement for a new commitment from her to build and operate a station on her requested new allocation in Smiley.

Crawford initially filed her petition for a new channel at Smiley on October 3, 2001, including her personal commitment to "...promptly construct the new facility". Later, on September 17, 2002, in "Petitioner's Comments" she reiterated her personal commitment that if her petition were granted, she would apply for use of the channel and "will construct the new facility". It is interesting to note that her Petitioner's Comments were in response to a Notice of Proposed Rulemaking released August 30, 2002, (DA 02-2061) which included her proposal for a new station in Smiley.

That same document also included her proposal for new stations in Alpine (docket 02-239); Guthrie (Docket 02-241); Hebbronville (Docket 02-242); Mertzon (docket 02-243); Premont (docket 02-244); Roaring Springs (docket 02-245); and Sanderson (docket 02-247). In all, just in this one combined Notice of Proposed Rulemaking there were EIGHT that were also proposals by Linda Crawford, each with her personal commitment, made for the FCC's reliance, that she would build and operate a station on the requested allocation. Obviously, had she not included such an unqualified commitment in each case, it would not have been published by the Commission.

On information and belief, we estimate that Linda Crawford has filed 30 or more such proposals ^{2/} and since the commitment to build is second only to the commitment to prosecute a filed Petition honestly and in good faith, one must presume that all these commitments were, in the first instance, submitted that way. To the extent that Crawford is now vacillating back and forth on her primary commitment, that has also raised reasonable doubts as to the validity and condition of her second commitment, i.e. the commitment to build a station on the requested channel.

More specifically, we now are faced with Crawford stating, without qualification, her withdrawal from this proceeding on April 6, 2004. Now she seeks to reinstate herself. The very act of her totally unexplained "flip-flop" on this matter in itself raises important and unresolved questions as to the substance of her commitments and resolve in this case which in themselves should bar any consideration of her "reinstatement". Also implicit in her withdrawal of her Petition is the withdrawal of her commitment to build a station in Smiley. Had she sought permission to come back into the proceeding and had she presented the extraordinary "good cause" showing necessary and required to be even considered for that, at that point she would still have needed to offer a new and reliable commitment to build the requested station at Smiley. She did not.

^{2/} This is our best estimate and we do not have the exact number but believe that the exact number would be readily available to the Commission in its own internal records and request official notice of that fact.

At this point in time it would have to be recognized that if she has filed 30 petitions with 30 commitments to build in each case, even at the most conservative estimate of \$500,000 to build, staff, and operate a new radio station, she would be already committed to provide the sum of \$15 Million dollars from her personal liquid assets just to cover her existing commitments to those other stations. There can be no question that each commitment must be considered with the necessary sums set aside and allocated to meet each such stated obligation. See Welch Communications, 5 FCC Rcd 4850 (1990). To hold otherwise would render such "commitments" meaningless, leaving the Commission with innumerable allocations and allotments that were made solely in response to such requests and in reliance upon such commitments ^{3/} and then abandoned and left fallow since there were really only funds sufficient for one of the many requested allotments.

As noted, Crawford's simple "announcement" of her own determination of her "Reinstatement" in this case was totally devoid of any "good cause showing". Moreover, it was also totally devoid of any new proposed "commitment" to build a station at Smiley were an allocation to be made there, or to verify that she had personal liquid assets beyond the approximately \$15 million dollars already committed by her in other proceedings with which to make a new commitment here in this case.

^{3/} Clearly, it is long-standing basic FCC policy that absent such a firm commitment, the Petition would be dismissed.

III. Summary and Conclusion

Throughout the course of this proceeding, Crawford has repeatedly violated the Commission's rules regarding, regulating, and restricting pleadings filed with the Commission and no amount of complaint as to that practice has had any effect (see for example New Ulm Motion to Strike filed January 16, 2003 and New Ulm Motion to Strike filed July 30, 2003). As a practice in this case Crawford has simply done what she wanted to do, when she wanted to do it, with no observation or deference whatsoever to FCC Rules and Regulations which are supposed to govern such actions. Instead, she has followed her own personal rules of doing as she pleases, abusing the Commission's processes along the way, and leaving other parties such as New Ulm to try and deal with her "special personal rules of conduct and practice" as best they can. She has continued to do so here and it simply cannot and should not be tolerated.

Here she has withdrawn from the proceeding for reasons good and sufficient to her, only to decide to "come back" almost two months later with little more than a 'notice' to the Commission and the parties that 'I'm back', with zero showing of "good cause" and with no petition or request for authority to do so from the Commission. To say that such an approach is presumptuous and arrogant is a gross understatement. "Contemptuous" might be the better word. No "good cause" showing, no explanation, not even a "by your leave".

There is no special privilege applicable to Crawford here and she has no "right" to come and go as she pleases, when she pleases. It shouldn't work that way and it cannot work that way. To condone such actions would create chaos in the Commission's proceedings. Not only should Crawford's 'announcement' of her presumptive "Reinstatement of Interest" in this proceeding be dismissed and given no further consideration in this proceeding. Crawford should also be admonished for her repeated abuse of the FCC's rules and processes, as once again so vividly illustrated here.

Respectfully submitted,

NEW ULM BROADCASTING COMPANY,

by


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June 9, 2004

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Opposition to Linda Crawford's 'Reinstatement of Interest' have been served by United States mail, postage prepaid this 9th day of June, 2004, upon the following:

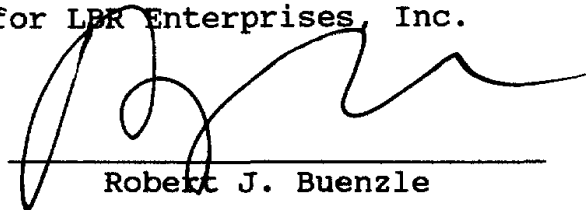
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